

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 31, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP2137-CR

Cir. Ct. No. 2012CF150

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

PAUL JAMES BACH,

DEFENDANT-APPELLANT.

APPEAL from the judgment of the circuit court for Polk County:
MOLLY E. GALEWYRICK, Judge. *Affirmed.*

Before Hoover, P.J., Mangerson and Stark, JJ.

¶1 PER CURIAM. Paul Bach appeals a judgment convicting him of burglary. He entered a guilty plea after the circuit court denied his motion to suppress evidence seized in a warrantless search of his motel room. He contends

the deputy lacked probable cause and exigent circumstances to justify the warrantless search. We affirm the judgment.

¶2 Deputy Troy Olson was dispatched to a motel to investigate a complaint from the desk clerk of an occupant smoking marijuana. The clerk advised Olson that she smelled burning marijuana coming from a room rented by Bach and his girlfriend, Jeanette Carlson. Olson confirmed a slight smell of marijuana emanating from that room. Olson knocked on the door and announced that he was a member of the Polk County sheriff's department. Carlson responded that she needed to get dressed. While Olson waited at the door, he heard Carlson talking to another person in the motel room and heard people moving around the room. After one to three minutes elapsed, Carlson opened the door, topless. Olson told her he thought she was getting dressed and directed her to go to the bathroom while he spoke with Bach who was seated on the bed, facing away from Olson with his hands on his lap. Due to Bach's positioning and the activity Olson heard while waiting outside the room, he ordered Bach to stand and put his hands behind his back for Olson's safety. Bach ultimately complied and was placed in handcuffs.

¶3 Olson informed Bach of the marijuana complaint, and asked where the marijuana was. Bach indicated it was on a small table and also directed Olson to a marijuana pipe in a table drawer. Bach and Carlson told Olson he could not search a locked safe or a locked pocket in a backpack. However, Olson found a small box containing a light bulb converted into what appeared to be a methamphetamine pipe as well as an additional marijuana pipe in the unlocked portion of the backpack. Olson advised Bach that he was going to attempt to get a search warrant to locate additional items he believed Bach had hidden while Olson was waiting to enter the room. After another deputy arrived, Bach consented to

search of the rest of the room, including the safe and backpack. Additional controlled substances were found in the safe and a handgun was recovered from the backpack.

¶4 Based on the ensuing investigation, Bach was charged with possession of a firearm by a felon, possession of THC, possession of drug paraphernalia, possession of methamphetamine, burglary, and five counts of felony theft. After the court denied Bach's motion to suppress evidence,¹ Bach agreed to plead guilty to one count of burglary and the remaining charges were dismissed. Pursuant to WIS. STAT. § 971.31(10) (2011-12), Bach appeals the denial of his motion to suppress evidence.

¶5 We reject Bach's argument that Olson lacked probable cause to search his motel room for evidence of marijuana use. Probable cause exists if an officer reasonably believes there is a fair probability that contraband or evidence of a crime will be found in a particular place. *Illinois v. Gates*, 462 U.S. 213, 238 (1983). Probable cause is evaluated through a reasonableness prism based on nontechnical probabilities and the factual and practical considerations of every day life. *State v. Robinson*, 2010 WI 80, ¶26, 327 Wis. 2d 302, 786 N.W.2d 463. The odor of marijuana coming from the room established probable cause for the search. See *State v. Kiekhefer*, 212 Wis. 2d 460, 479, 569 N.W.2d 316 (Ct. App. 1997).

¹ The court initially granted the motion to suppress based on its conclusion that Olson could have obtained a search warrant before knocking on the motel room door and he, in effect, created his own exigency. On reconsideration, the court denied the motion to suppress based on *State v. Robinson*, 2010 WI 80, ¶32, 327 Wis. 2d 302, 786 N.W.2d 463. Bach does not challenge that ruling on appeal.

¶6 Bach contends “the only potential evidence that might have been present would have been some ashes.” Even if that were true, the presence of marijuana ash has been recognized as evidence of marijuana possession. *State v. Kabat*, 76 Wis. 2d 224, 227, 251 N.W.2d 38 (1977). Olson could also reasonably expect to find drug paraphernalia such as a pipe in the room. Bach also argues “it would be absurd to suggest that it would have been reasonable to believe that there would be a large amount of marijuana in the room, since no one with such a quantity would be dumb enough to smoke some of it in a public place such as a motel.” Possession of any amount of marijuana is illegal, not just “large amounts.” In addition, case law suggests criminals frequently do “dumb” things that ultimately lead to their arrests.

¶7 We also reject Bach’s argument that Olson’s one- to three-minute delay entering the room removed any exigency that previously existed because evidence of marijuana use could have been flushed down the toilet during that delay. An exigent circumstance exists when there is a legitimate risk that the evidence will be destroyed. *See State v. Smith*, 131 Wis. 2d 220, 229, 388 N.W.2d 601 (1986). Upon discovering that Carlson did not use the one to three minutes to find clothing, Olson reasonably believed that time was used to hide evidence. There is no evidence that Olson heard flushing sounds. Evidence of drug paraphernalia such as a pipe could not be destroyed by flushing, and some remnants of marijuana or its packaging might still be recovered despite efforts to destroy the evidence. Olson did not have the luxury of taking time to secure a search warrant after Bach and Carlson were made aware that a drug investigation would be conducted.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE
809.23(1)(b)5. (2011-12).

